

“The Most Accurate and Useful Law Books Possible”  
Wash. Terr., Wash., Wn.2d, and Wn. App.  
Milestones of Official Case Reporting in Washington

by Tim Fuller, Reporter of Decisions

Washington’s official court reports reflect the development and exponential growth of the state’s common law. After the Supreme Court of the Washington Territory decided its first case in 1854, it took 25 years for sufficient opinions to accumulate to fill the first of the three volumes of the Washington Territory Reports. Today, the opinions of the Supreme Court and the Court of Appeals together fill eight volumes per year.<sup>1</sup>

John B. Allen was the first reporter of decisions. In addition to publishing volumes 1 and 2 of the Washington Territory Reports, Allen was a prominent lawyer and citizen: he served as a United States Attorney for the Washington Territory, a delegate to Congress from the Washington Territory, and a United States Senator after statehood.<sup>2</sup> An elementary school named after him is now the home of the Phinney Neighborhood Association in Seattle.<sup>3</sup>

Henry G. Struve published the third and final volume of the Territory Reports. Like Allen, Struve was a leading early Washingtonian, having served as a United States District Attorney in Vancouver, a judge advocate general of the Washington Territory, a probate judge for Clark County, a two-term mayor of Seattle, the director of the Seattle Public Schools, a four-term president of the board of regents of the Washington University (now the University of Washington), and general counsel for the Northern Pacific Railroad.<sup>4</sup>

Although little is known about internal court procedures of that era, the Territorial Supreme Court Rule XIII,<sup>5</sup> adopted in 1887, provides a hint of the postfiling processing of an opinion:

All opinions of the court shall be recorded by the clerk in a well-bound volume, and the original filed with the papers in the case, and shall not be furnished by the clerk for publication until a copy, in print or typewriting, has been furnished the judge rendering the same, and been by him revised.

With the ratification of the Washington Constitution in 1889, the reporter of decisions became a constitutional officer of the Supreme Court.<sup>6</sup> In 1891, the first reporter poststatehood, Eugene G. Kreider, published Washington Reports Volume 1, which contains opinions of the newly formed state Supreme Court as well as opinions of the Territorial Supreme Court filed in 1889.

A notable improvement in the timeliness of case reporting occurred in 1905 when the legislature directed that the publishing contract require the publisher to “issue” Supreme Court opinions “once each week in pamphlet form.”<sup>7</sup> Although the 1905 statute also provided that the opinions were to include “appropriate headnotes,”<sup>8</sup> in fact it wasn’t

until 1959 that headnotes were included in the advance sheets. The 1905 statute also provided that the maximum price that the publisher could charge for each Washington Reports bound volume was \$2.50 plus an additional 50 cents to receive advance sheets for that volume.<sup>9</sup> The actual charge in 1919 was \$1.75 per volume plus 50 cents for the volume's advance sheets.<sup>10</sup> Thereafter, the price of an annual subscription to the advance sheets increased to no more than \$4.00.<sup>11</sup>

Arthur Remington enjoys a well deserved reputation for being a renaissance man in the history of Washington's legal publications. Because he lent his name to Remington's Revised Statutes, he is best known for his role as a compiler of Washington statutory law. Less well known is his 33-year tenure as reporter of decisions, responsible for publishing 155 volumes of the Washington Reports.<sup>12</sup> Remington's state service didn't prevent him from practicing law in Tacoma; in fact, he argued 12 cases before the state Supreme Court while serving as the reporter. His personal and professional standards are described in the Washington Biographies Project as follows:

He belongs to that school of barristers who never permit themselves to become "ruffled," but who are, at all times calm and dignified and in thorough accord with the majesty of the law.<sup>[13]</sup>

Remington no doubt needed to hold down multiple jobs because the reporter of decisions' annual salary was frozen at \$3,500 from 1909 to 1938. The reporter received a \$1,300 raise in 1938, which put the reporter's salary on par with the state law librarian. Some other judicial branch salaries in 1938 were: Supreme Court justices: \$7,000; superior court judges: \$4,500–\$6,000; assistant reporter of decisions: \$3,120; Supreme Court clerk: \$3,000; reporter's office secretary: \$2,100.<sup>14</sup>

The reporter's office budget for the biennium ending March 31, 1939 included the following notable expenditures: blotters \$15.00, twine \$4.80, rubber bands \$.53, clock repairs \$3.50, *Webster's International Dictionary* \$20.00, telegrams \$4.13, 164 lbs. of paper \$8.97, 11,000 index cards \$8.11, cement floor stain and turpentine \$4.83.<sup>15</sup>

The Second Series of the Washington Reports began in 1939. The new series was started at the behest of the Bancroft-Whitney Company of San Francisco, the contract distributor of the reports since the publication of 1 Wash. Terr. Bancroft-Whitney believed that starting a new series would help marketing.

The Commission on Supreme Court Reports was created by statute in 1943 to oversee the publication of Wn.2d.<sup>16</sup> The minutes of the first commission meeting indicate that the reports were losing money because of "marked increases in the cost of material and printing . . . and obsolete and unreasonable specifications."<sup>17</sup>

In addition to Supreme Court opinions, the Washington Reports publishes proposed and adopted court rules of statewide significance. The first rules, adopted by the Territorial Supreme Court in 1887, take up only seven pages of the Territory Reports.<sup>18</sup> Initially, "Rules of Court" was printed at the bottom of the spine of bound volumes containing

court rules, but that practice was discontinued in 1979 when it became clear that every Wn.2d volume contained some rules revisions. In 1951, the reporter's office compiled and published all the effective court rules in a bound volume, 34A Wn.2d. Pocket parts updating the rules were issued through 1957.

West Publishing Company began publication of the Washington Reporter in 1956. A skeptical attorney in Seattle, loyal to the official reports, wrote to West as follows:

It happens that we already have an excellent advance sheet and permanent reports system in this state—one of the very best in the country—and controlled by statute . . . . We need no competition nor duplication there and your service would not be official under the statute, and would, therefore, not find much market among lawyers.

I suggest that this whole matter be reconsidered by your company.

What we could use, as you know, is a first class Washington Code. But we do not need another supreme court reporting system, especially one without official standing.<sup>[19]</sup>

The reporter's office initiated the *Washington Reports Style Manual* in 1963. The manual was discontinued in 1995. Today the office utilizes the *Harvard Bluebook* as its basic citation guide. The *Office of Reporter of Opinions Style Sheet*<sup>20</sup> sets forth additions and exceptions to the *Bluebook*. The *Chicago Manual of Style* is the authority for punctuation and style matters not covered by the *Style Sheet* or the *Bluebook*, and *Webster's Third New International Dictionary* is the authority for spelling.<sup>21</sup>

After statehood, the state printing plant took over responsibility for printing and binding the official reports from the Bancroft-Whitney Company. The Supreme Court continued to contract with Bancroft-Whitney to provide sales, distribution, and accounting services. In 1965, Bancroft-Whitney advertising was eliminated from the advance sheets. In a memorandum to the Supreme Court advocating the prohibition, Reporter of Decisions Richard F. Jones<sup>22</sup> posed the following rhetorical question:

[S]houldn't [an official advance sheet] which represents the labors of the highest Judges of the State of Washington be packaged with dignity befitting such a high calling rather than allowing the impression of a commercial magazine seeking advertisers for its very existence?<sup>[23]</sup>

1969 marked the advent of the Court of Appeals and, with it, volume 1 of the Washington Appellate Reports. The first Court of Appeals opinion, with the euphonious name of *State v. Tate*, 1 Wn. App. 1 (1969), was written by Judge Vernon R. Pearson. No case backlog existed at the very beginning—the trial court's April 9, 1969 order of competency appealed in the *Tate* case was affirmed by the Court of Appeals on September 10, 1969.

The publishing of Court of Appeals opinions more than doubled the work of the reporter's office. Some relief was afforded in 1971 when RCW 2.06.040 was amended to require that opinions lacking precedential value not be published.<sup>24</sup>

Initially, Court of Appeals advance sheets were issued for two consecutive weeks followed by a Supreme Court advance sheet for the third week. Within a matter of months, however, the present system of publishing each court's advance sheets in alternating weeks was instituted because the larger number of Court of Appeals opinions was offset by the longer length of Supreme Court opinions.<sup>25</sup>

Wn. App. initiated two improvements not previously tried in Wn.2d: (1) advance sheets with uniform pagination (i.e., identical page numbers in the advance sheets and bound volumes), making permanent citations available in the advance sheets and (2) bound volumes with a Washington Appellate Reports citation and the parallel Pacific Reporter citation in the running head at the top of every page. In 1971, Wn.2d followed suit. Before the adoption of uniform pagination in Wn.2d, the name of the Supreme Court advance sheets was "Washington Decisions" and all Wash. Dec.<sup>26</sup> cites had to be updated to Wn.2d cites when the bound volumes were published.

Further innovations occurred in the mid-1970s:

- 1975. Addition of a copyright notice to the official reports.<sup>27</sup>
- 1976. The Supreme Court entered an order granting permission to use the copyrighted portions of the official reports to "news media and educational institutions for any purpose, and to any other person or organization for any noncommercial purpose."<sup>28</sup>
- 1977. Printing changed from "hot lead" type set in the state printing plant to camera-ready copy composed from electronic data entered in the reporter's office.
- 1977. Addition of summary paragraphs following the headnotes relating the nature of the action and the disposition of the case at each court level. The summary paragraphs, just like the headnotes, were drafted by an attorney in the reporter's office and approved by the judge who authored the opinion.<sup>29</sup>

The reporter's office had a longstanding goal of assuming complete control over every aspect of producing and distributing the official reports. A first step was accomplished in 1968 when the commission acquired the entire back inventory of the printed reports (including the lead plates needed for reprinting bound volumes) from Bancroft-Whitney. The final step was accomplished in 1982 when Reporter Richard Jones persuaded the commission and the Supreme Court not to renew the Bancroft-Whitney contract. Washington became the only state in the country with complete control over all aspects of editing, composing, printing, marketing, and accounting for its reports. A single commission employee, whose salary was paid by the subscribers, performed all of the functions previously contracted out.

Subscriber service improved markedly. For example, address changes for which Bancroft-Whitney required six weeks' notice were implemented within minutes of receipt. Bancroft-Whitney's markup over actual cost of production was 75 percent for advance sheets and current bound volumes, and 138 percent for reprinted bound volumes. The State's overhead was far lower, resulting in a dramatic reduction in prices.<sup>30</sup> For the first time, the entire back inventory of reports was in stock and available for sale. The

official reports prospered. Wn.2d and Wn. App. outsold the competing Washington Reporter by a ratio of about eight to one.

In 1983, the reporter's office began publication of an annual softbound *Official Rules of Court* deskbook distributed at no cost to all Wn.2d advance sheet subscribers. The deskbook was discontinued in 1995.

The first *Cumulative Subject Index* was distributed at no cost to all Wn.2d advance sheet subscribers in 1987. The *Index* collates all of the headnote index entries from cases back to 1979. In 2004 the *Index* became too large to bind in a single volume. From its inception, the *Index* has grown from 142 pages covering 15 volumes to 1705 pages covering 160 volumes.

The decade of the 1990s brought tumultuous change to the reporter's office. Realizing the benefits of publishing case law electronically, the commission in 1991 authorized the reporter's office to acquire a database of case law. The commission issued a request for quotations and awarded a contract to scan the official reports from 1939 to 1977.<sup>31</sup> In 1994 the commission licensed its case law database to the Washington State Bar Association for use on its bulletin board system.

The legislature in 1994 drastically undermined the reporter's office by amending the Supreme Court budget to require the office to become entirely self-supporting, i.e., to pay the salaries of nine Supreme Court employees out of the subscription sales.<sup>32</sup> The Supreme Court responded by hiring the National Center for the State Courts to evaluate the situation. The National Center's study concluded that the Supreme Court had no practical alternative other than to contract out the sales, distribution, accounting, composition, printing, and some editing functions of the official reports. In 1995, the court issued a request for proposals (RFP) and awarded a three-year publishing contract to the Thomson Corporation, a Canadian company.<sup>33</sup> Six of nine employees in the reporter's office and both of the employees in the commission office were discharged. The *Official Rules of Court*, the *Cumulative Subject Index*, and the *Washington Reports Style Manual* ended.

Following the partial contracting out, Thomson possessed the electronic data of, and held the copyright to the editorial enhancements in, the post-July 1995 official reports. Since state publication of the official reports on a CD-Rom or the Internet was no longer feasible, the Supreme Court in 1995 sold its case law database "as is" to the WSBA and the Statute Law Committee for \$4,000, with credit given for previous license fees paid.

Sales of the back inventory of the bound volumes were not sufficient to pay the cost of storage and insurance, so in 1998 the entire inventory<sup>34</sup> was disposed of. Interested parties obtained volumes for the cost of shipping; remaining volumes were recycled.

In 1998, in return for a one-year publishing contract extension, Thomson reinstituted the *Cumulative Subject Index*<sup>35</sup> and gave the Supreme Court, at the end of the contract, a perpetual and sublicensable license to use the materials in the official reports copyrighted

by Thomson. After a second one-year contract extension, the Supreme Court issued another RFP and in 2000 awarded the publishing contract to LEXIS Publishing Company.

Three notable advances were instituted during the past decade: (1) in 1996 the Supreme Court oral argument dates were set out above the case captions in Wn.2d; (2) also in 1996 both the Supreme Court and the Court of Appeals began posting slip opinions on the judicial branch Internet site;<sup>36</sup> and (3) in 2005 opinion paragraphs were numbered, starting with the first advance sheets of 153 Wn.2d and 124 Wn. App.

The publishing contract with LEXIS was extended for two years in 2003. In return for ending the requirement that LEXIS publish the official reports on the Internet and on CD-Rom, LEXIS licensed to the Supreme Court (1) the historical database of case law that LEXIS acquired when it purchased CD Law, Inc. (cases from the Territory Reports through June 30, 2000) and (2) electronic files of all advance sheets and bound volumes that LEXIS produced under the publishing contract. The Supreme Court then sublicensed the entire case law database to the Statute Law Committee. The data is now included in the Statute Law Committee's case law CD-Roms and is available for free on the Internet at a site maintained by the Municipal Research and Services Center.<sup>37</sup> Pursuant to a second two-year publishing contract extension in 2005, the Supreme Court acquired the right, as of the end of the contract on July 1, 2007, to sublicense the historical case law database to parties other than the Statute Law Committee.

Despite the Washington official reports' acceptance in the marketplace and support by the appellate courts, their long-term viability is uncertain. Legal research and legal reference materials clearly are in transition. The advance sheets and bound volumes retain many devoted subscribers, but subscriptions peaked in 1992 and began a gradual but steady decline as legal research increasingly is performed electronically. Providing free Internet access to slip opinions and the entire historical database of official reports may have accelerated the decline.

The contracting out system is fragile. Sales declines inevitably lead to higher prices as fewer subscribers remain to pay the fixed costs of editing and production. If legal publishing companies in the future decline to bid on the publishing contract, the Supreme Court will have to end the official reports or ask the legislature to fund new staff to provide the editorial and business services that the contract publisher now provides to the State at no cost.

The Washington official reports remain a fundamental cornerstone of the state's common law. The advance sheets and bound volumes are tightly edited and include many features and enhancements not available elsewhere, including headnotes and summary paragraphs approved by the author of the opinion. Furthermore, in a marketplace with a myriad of competing case law databases, there is a greater need than ever for official reports. Unofficial case law databases present version and security issues.<sup>38</sup> In this electronic world, when Internet users cannot be certain of the source and accuracy of the materials they have accessed, it is critical that Washington maintain a single, final, and

authoritative version of every opinion—the Wn.2d and Wn. App. bound volumes. As the gold standard of Washington appellate court opinions, the official reports are well worth preserving.

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<sup>1</sup> Even with approximately 75 to 80 percent of Court of Appeals opinions being unpublished, the reporter's office in recent years has published an average of 7,400 Wn.2d and Wn. App. advance sheet opinion pages annually. This is more than twice the number of opinion pages published in 1970, the first full year of the Court of Appeals, when all Court of Appeals opinions were published.

<sup>2</sup> Biographical Directory of the United States Congress, 1774—Present, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=A000130>.

<sup>3</sup> HistoryLink.org, The Online Encyclopedia of Washington State History, at [http://www.historylink.org/output.cfm?file\\_id=3526](http://www.historylink.org/output.cfm?file_id=3526).

<sup>4</sup> *Id.* at [http://www.historylink.org/essays/output.cfm?file\\_id=2782](http://www.historylink.org/essays/output.cfm?file_id=2782); Washington Courts, Educational Resources, Photo History, at [http://www.courts.wa.gov/education/history/?fa=education\\_history.display&fileID=judges](http://www.courts.wa.gov/education/history/?fa=education_history.display&fileID=judges).

<sup>5</sup> 3 Wash. Terr. at 629.

<sup>6</sup> Article 4, section 18 of the constitution provides: “The judges of the supreme court shall appoint a reporter for the decisions of that court . . . .”

<sup>7</sup> Laws of 1905, p. 331, § 4; 11 Rem. Rev. Stat. 11067 (1933).

<sup>8</sup> *Id.*

<sup>9</sup> Laws of 1905, p. 330, § 2; 11 Rem. Rev. Stat. 11065 (1933).

<sup>10</sup> Laws of 1919, p. 287, § 2; 11 Rem. Rev. Stat. 11069 (1933).

<sup>11</sup> *Id.*

<sup>12</sup> Arthur Remington served as Reporter of Decisions from 1903 to 1936; he was responsible for publishing volumes 33-187 Wash.

<sup>13</sup> H. James Boswell, American Blue Book Western Washington 18 (1922), available at <http://freepages.genealogy.rootsweb.com/~jtenlen/aremington.txt> (Washington Biographies Project).

<sup>14</sup> 11 Rem. Rev. Stat. §§ 11053, 11053-1 (1933); letter from Reporter of Decisions Solon D. Williams to Chief Justice William J. Steinert (July 11, 1938) (on file in the Office of Reporter of Decisions). Williams served as the reporter of decisions from 1936 to 1958. His son, Ward Williams, served on the Court of Appeals from 1970 to 1989.

<sup>15</sup> Examination Report of the Supreme Court Reporter by the Division of Budget of the Washington Department of Finance, Budget and Business (May 12, 1939) (on file in the Office of Reporter of Decisions).

<sup>16</sup> Laws of 1943, ch. 185, § 1, codified in RCW 2.32.160. The commission's name was changed in 2005 to the Washington Court Reports Commission to reflect the fact that its duties encompass the Court of Appeals as well as the Supreme Court. Laws of 2005, ch. 190, § 1, amending RCW 2.32.160.

<sup>17</sup> Minutes of the Commission on Supreme Court Reports (June 18, 1943) (on file in the Office of Reporter of Decisions).

<sup>18</sup> 3 Wash. Terr. at 625-31.

<sup>19</sup> Letter from attorney Alfred J. Schweppe to Victor J. Holper, Managing Editor, West Publishing Company (Sept. 26, 1956) (on file in the Office of Reporter of Decisions).

<sup>20</sup> The *Style Sheet* is available to the public at [http://www.courts.wa.gov/appellate\\_trial\\_courts/supreme/?fa=atc\\_supreme.style](http://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.style) and as appendix 1 to GR 14.

<sup>21</sup> The reporter's office also publishes a comprehensive *Opinion Citation and Style Guide* on the Administrative Office of the Courts extranet that is available only to state court personnel.

<sup>22</sup> Only Arthur Remington served as Reporter of Decisions longer than Richard Jones, whose tenure extended from 1960 to 1989. A tribute to Richard Jones published following his retirement summarizes his personal commitment to the official reports by stating: “The reports to him are an institution representing the collective wisdom of the appellate judges of this state, and that sentiment motivated his sustained efforts to publish the most accurate and useful law books possible.” 111 Wn.2d at lii.

<sup>23</sup> Memorandum from Richard F. Jones to Chief Justice Richard B. Ott (July 3, 1964) (on file in the Office of Reporter of Decisions).

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<sup>24</sup> Laws of 1971, ch. 41, § 1. The first unpublished Court of Appeals opinion was *Nichols v. Lopeman*, noted at 5 Wn. App. 1001 (1971).

<sup>25</sup> Two additional Wn.2d advance sheets were published annually from 1983 through 1995: a brown advance sheet dated the first Friday in January containing proposed court rules and a red advance sheet dated the first Friday in July containing adoptions, amendments, and rescissions of court rules. These advance sheets were instituted to implement the schedule for reviewing and adopting court rules that was established by GR 9, adopted in 1982.

<sup>26</sup> “Wash. Dec.” was commonly pronounced “wash dish.”

<sup>27</sup> 2 Wash. Terr. and 5 Wash. through 9 Wash. also contain a copyright notice.

<sup>28</sup> Wash. State Supreme Court Order No. 25700-B-178 (June 3, 1976).

<sup>29</sup> Other editorial features in the bound volumes were modified or discontinued over the years. In 1939, the table of cases cited was discontinued. In 1962, the table of statutes cited and construed was discontinued. And in 1963, the text of headnotes was eliminated from the volume indexes; indexes were limited to the boldface “catchlines” preceding each headnote.

<sup>30</sup> The price of a bound volume fell from \$29.50 to \$17.50; the price of an advance sheet subscription fell from \$75 to \$40. The Supreme Court, which purchased 450 copies of each bound volume and 50 advance sheet subscriptions for distribution to various governmental entities in accordance with former RCW 40.04.100 (1979), saved \$35,900 annually.

<sup>31</sup> Post-1977 opinions were composed electronically and were stored in computer files.

<sup>32</sup> Laws of 1994, 1st Spec. Sess, ch. 6, § 108 provides: “The supreme court is directed to fully recover all costs, including staff costs, associated with publishing supreme court opinions by the reporter of decisions.”

<sup>33</sup> Thomson had acquired several legal publishing companies in the United States, including the Callaghan Clark Boardman Company of Chicago, IL, where it initially assigned editorial responsibility for the Washington official reports project, and Lawyers Cooperative Publishing Company of Rochester, NY, where it transferred responsibility for the project later in 1995. Thomson purchased West Publishing Company in 1996 and transferred responsibility for the official reports to the West editorial office in Eagan, MN in 1998.

<sup>34</sup> The inventory consisted of 43,675 volumes with a book value of approximately \$1 million.

<sup>35</sup> The *Index* was not provided for free with a Wn.2d advance sheet subscription as it was before July 1995; Thomson charged the same amount as for a Wn.2d bound volume.

<sup>36</sup> <http://www.courts.wa.gov/opinions/index.cfm>.

<sup>37</sup> <http://www.legalwa.org>. Washington is a leader in providing access to its case law. Slip opinions are available for viewing and copying at appellate court clerk’s offices and are available on-line for free at the judicial branch website (<http://www.courts.wa.gov/opinions/index.cfm>). The Wn.2d and Wn. App. advance sheets and bound volumes are sold by LEXIS for a reasonable price and are available at every county law library. Furthermore, the entire case law database on two CD-Rom disks is sold for \$50 apiece by the Statute Law Committee and is available on-line for free at <http://www.legalwa.org>.

<sup>38</sup> For example: Is the database composed strictly of slip opinions? Does it incorporate formal court orders that change or withdraw opinions? Does it incorporate editorial corrections (nonsubstantive changes to citation, style, form, grammar, etc.) made for the official advance sheets and bound volumes? Has it been modified according to the publisher’s editorial standards? Could it have been tampered with?